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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 724

SUBURBAN LUMBER COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

FLOYD H. BRADLEY,
Counsel for Petitioner.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Summary statement of the matter involved	1
Jurisdiction	4
Opinions below	4
Questions involved	4
Reasons relied on for the allowance of writ of certiorari	5
Brief in support of petition	7
I. The Circuit Court of Appeals was without jurisdiction to decree enforcement of the alleged Order of the National Labor Relations Board because a copy of the alleged Order was never served on petitioner (respondent below)	7
II. The Circuit Court of Appeals was without jurisdiction in this case because a certified transcript of the record in the proceeding before the Board was not filed with that Court in compliance with the provisions of the Act	11
III. The Circuit Court of Appeals erred in denying petitioner (respondent below) the right to have made a part of the record, the papers served upon it	14
IV. The National Labor Relations Act is not applicable to this petitioner for the reason that it is a small highly localized retail business, and was not and is not engaged in interstate commerce or in activities materially affecting commerce within the meaning of the Act	16
V. Conclusion	24

Table of Cases Cited.

American Sugar Refining Co. v. *Delaware, L. & W. R. Co.*, 207 Fed. 733 (C. C. A., 3rd Cir.)	8
Benjamin Fainblatt et al., 1 N. L. R. B. 864	22

Page

Carolina Aluminum Co. v. *Federal Power Commission*, 97 F. (2d) 435 (C. C. A., 4th Cir.) 10
Clover Fork Coal Co. v. *N. L. R. B.*, 97 F. (2d) 331 (C. C. A., 6th Cir.) 20
Consolidated Edison Co. v. *N. L. R. B.*, 305 U. S. 197 18
Continental Oil Co. v. *N. L. R. B.*, 113 F. (2d) 473 (C. C. A., 10th Cir.) 20
Fox v. *Lantrip*, 162 Ky. 178, 172 S. W. 133 10
N. L. R. B. v. *Crowe Coal Co.*, 104 F. (2d) 633 (C. C. A., 8th Cir.) 20
N. L. R. B. v. *Biles-Coleman Lumber Co.*, 96 F. (2d) 197 (C. C. A., 9th Cir.) 15, 21
N. L. R. B. v. *Fainblatt*, 306 U. S. 601 18
N. L. R. B. v. *Good Coal Co.*, 110 F. (2d) 501 (C. C. A., 6th Cir.) 20
N. L. R. B. v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 17
N. L. R. B. v. *White Swan Co.*, 118 F. (2d) 1002 (certiorari denied, October 13, 1941) 19
North Whittier Heights Citrus Assn. v. *N. L. R. B.*, 109 F. (2d) 76 21
Santa Cruz Fruit Packing Co. v. *N. L. R. B.*, 303 U. S. 453 ..... 19, 21
Shannahan v. *United States*, 20 Fed. Supp. 1002 (Dist. Ct. N. D. Ind.) 10
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Texas Co. v. *N. L. R. B.*, 112 F. (2d) 744 (C. C. A., 5th Cir.) 20
Washington, Virginia & Maryland Coach Co. v. *N. L. R. B.*, 301 U. S. 142 19

STATUTES CITED.

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National Labor Relations Act:
Section 10(c), 49 Stat. 453, 29 U. S. C. A. 160(c) 2, 5, 8
Section 11(4), 49 Stat. 455, 29 U. S. C. A. 161(4) 5, 8
Section 10(e), 49 Stat. 453, 29 U. S. C. A. 160(e), 4, 5, 12, 13, 15

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	Page
Baldwin's Century Edition of Bouvier's Law Dictionary	13
Chitty's General Practice (American Edition, Philadelphia, 1836)	13
Corpus Juris Secundum, Vol. 18	13
Words & Phrases (Second Series)	13

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Suburban Lumber Company, respectfully shows to the Honorable Court:

Summary Statement of the Matter Involved.

On or about December 10, 1936, the petitioner, Suburban Lumber Company, a small retail outlet for lumber and building material, discharged certain of its employees. Alleging that said employees had been discharged because of their membership or interest in a labor organization known as International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 676, said Union filed charges and amended charges against

petitioner with the National Labor Relations Board. The Board thereupon issued its complaint, charging petitioner with violation Section 8, paragraphs (1), (3) and (5) of the National Labor Relations Act, by the alleged discriminatory discharge of the aforesaid employees, and by petitioner's alleged refusal to bargain collectively with said Union. After hearings were held at Philadelphia on February 18 and 19, 1937, the trial examiner, Robert M. Gates, Esq., rendered an intermediate report dated March 20, 1937, finding that petitioner had engaged in certain unfair labor practices and recommending that petitioner cease and desist from such alleged practices and take certain affirmative action. Thereafter, on August 2, 1937, the National Labor Relations Board allegedly rendered its decision finding that petitioner had engaged in the unfair labor practices and allegedly entered its Order requiring petitioner to cease and desist from such unfair labor practices and to take certain affirmative action and notify the Regional Director for the Fourth Region within 10 days from the date of said Order what steps the petitioner had taken to comply therewith.

Your petitioner was not served with this Order as required by Section 10(c) of the National Labor Relations Act.

On or about June 15, 1940 the National Labor Relations Board filed its petition for enforcement of the Order alleging that its Order had been served upon petitioner, and certified and filed in the said Court what it alleged to be a transcript of the entire record in the proceeding, including the pleadings and testimony upon which the Order was entered and the decision, findings of fact, conclusions of law and Order of the Board pursuant to the requirements of Section 10(e) of the National Labor Relations Act.

A Copy of the alleged Order of the Board was not included in the said transcript as filed with the Circuit Court

as will appear from the original record herein (And see R. 1-3). Your petitioner denied in its answer to the petition for enforcement, that the alleged Order had been served upon it and thereupon moved to file as a part of the record and as exhibits in said case, the letter and papers which had actually been served by the National Labor Relations Board upon the attorney for petitioner. Your petitioner's motion was denied by the Circuit Court on September 16, 1940 (R. 128, 129).

Your petitioner urged that the Circuit Court of Appeals for the Third Circuit was without jurisdiction in the matter as the Board had failed to comply with the condition precedent to the Court's jurisdiction, namely, the certifying and filing in the Court of a transcript of the entire record in the proceeding, including the pleadings and testimony upon which the Order was entered and the findings and Order of the Board, as set forth in Section 10(e) of the National Labor Relations Act.

Your petitioner also argued that the Court was without jurisdiction and that the Board was not entitled to have its said Order enforced, by reason of the fact that the Order had not been served upon your petitioner as required by Section 10(c) of the National Labor Relations Act, and that the Board's delay in seeking enforcement of its alleged Order rendered the enforcement at such time inequitable.

Your petitioner, further, argued that the Board had no jurisdiction over your petitioner by reason of the fact that petitioner was not and is not engaged in interstate commerce or in activities materially affecting commerce within the meaning of the National Labor Relations Act.

On June 30, 1941, the Circuit Court filed its opinion enforcing the Board's Order except as to the matter of back pay which was remitted to the Board for further hearing and determination (R. 130-142). A decree in accord-

ance with this opinion was entered September 11, 1941 (R. 142-144).

Jurisdiction.

The final decree of the United States Circuit Court of Appeals for the Third Circuit was entered September 10, 1941 (R. 142).

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 938 (28 U. S. C. A. Section 347(a)) and Section 10(e) of the National Labor Relations Act, July 5, 1935, c. 372, § 10, 49 Stat. 453 (29 U. S. C. A. Section 160(e)).

Opinions Below.

The opinion of the National Labor Relations Board dated August 2, 1937, is reported in 3 N. L. R. B. 194.

The opinion of the United States Circuit Court of Appeals for the Third Circuit was filed on June 30, 1941, and is reported in *National Labor Relations Board* v. *Suburban Lumber Company,* 121 F. (2d) 829.

Questions Involved.

1. Did the Circuit Court of Appeals for the Third Circuit have jurisdiction to decree enforcement of the Order of the National Labor Relations Board when a copy of the alleged Order was not served upon the person charged with engaging in unfair labor practices?

2. Did the Circuit Court of Appeals for the Third Circuit have jurisdiction to decree enforcement of the Order of the National Labor Relations Board when a copy of the alleged Order was not filed with the Circuit Court?

3. Did the petitioner have the right to have included in the record before the Circuit Court of Appeals for the

Third Circuit, the papers actually served upon it by the National Labor Relations Board?

4. Does the National Labor Relations Act apply to a small, highly localized enterprise engaged in retail trade?

Reasons Relied On for the Allowance of the Writ of Certiorari.

1. The decision of the Circuit Court of Appeals for the Third Circuit involved the construction of Section 10(c) of the National Labor Relations Act which requires that "*the Board shall state its findings of fact and shall issue and cause to be served on such person an order*" and 11(4) of said act which sets forth the manner of service. National Labor Relations Act, July 5, 1935, c. 372, §§ 10 and 11, 49 Stat. 453 and 455 (29 U. S. C. A. Sections 160(c) and 161(4)). This important question of the construction of this Federal Statute has not been but should be settled by this Honorable Court.

According to the opinion of the Circuit Court of Appeals for the Third Circuit, the issue was whether to give a strict or a liberal construction to "these service statutes" and on this question "The courts disagree and are about evenly divided."

2. The decision of the Circuit Court of Appeals for the Third Circuit involved the construction of Section 10(e) of the National Labor Relations Act, July 5, 1935, c. 372, § 10, 49 Stat. 453 (29 U. S. C. A. Section 160(e)) which provides that the Board "*shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction* of the proceeding * * *." This important question of the

construction of this Federal Statute has not been but should be settled by this Honorable Court.

3. The decision of the Circuit Court of Appeals for the Third Circuit involved the determination of the applicability of the National Labor Relations Act, July 5, 1935, c. 372, 49 Stat. 449-457 (29 U. S. C. A. Sections 151-166) to a small retail lumber company practically all of whose sales are intrastate and employing a force of only thirteen or fourteen, including clerical employees.

4. The decision of the Circuit Court of Appeals for the Third Circuit is probably in conflict with applicable decisions of this Honorable Court.

5. The proper determination of the Federal questions involved herein is of great national importance and should be determined by this Honorable Court.

SUBURBAN LUMBER COMPANY,
By FLOYD H. BRADLEY,
Of Counsel.